

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY MICHAEL MARCELLI,

Petitioner,

vs.

GREG COX, *et al.*,

Respondents.

3:12-cv-00211-LRH-WGC

ORDER

This is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, brought by a Nevada prisoner.

Petitioner has filed a motion for extension of time to oppose respondents' motion to dismiss (ECF #27). Good cause appearing, petitioner's motion is granted.

Petitioner has filed three other motions. On October 4, 2012, he filed a motion for appointment of counsel (ECF #16). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). The petition on file in this action appears sufficiently clear in presenting the issues that petitioner wishes to raise. Counsel is not

1 justified at this time. The motion is denied without prejudice.

2 Also before the court is petitioner's motion for default (ECF #23). Petitioner's motion appears
3 to be based on the mistaken belief that respondents had to file an answer to the petition by November
4 30, 2012. However, respondents were directed to file a responsive pleading by that deadline.
5 Respondents filed a motion to dismiss on November 18, 2012, which is a responsive pleading (ECF
6 #19). Accordingly, petitioner's motion is without merit and is denied.

7 Finally, petitioner has filed a motion for court to take judicial notice (ECF #26). This motion
8 is also denied. Petitioner shall include all arguments that he wishes to set forth to oppose the motion to
9 dismiss in his opposition to the motion to dismiss and not in any other filings.

10 **IT IS THEREFORE ORDERED** that petitioner's motion to extend time to respond to
11 respondents' motion to dismiss (ECF #27) is **GRANTED**. Petitioner has up to and including **thirty (30)**
12 **days** from the date this order is entered to file and serve his opposition to the motion to dismiss.

13 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF #16)
14 is **DENIED** without prejudice.

15 **IT IS FURTHER ORDERED** that petitioner's motion for default (ECF #23) and his motion
16 for court to take judicial notice (ECF #26) are both **DENIED**.

17 DATED this 28th day of January, 2013.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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